

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 RICHARD WAYNE BLAIR,
11 Petitioner,

12 v.

13 DANIEL WHITE,
Respondent.

CASE NO. 3:18-CV-05771-BHS-DWC

ORDER DENYING MOTION TO
APPOINT COUNSEL FOR
EVIDENTIARY HEARING

14 The District Court has referred this action filed under 28 U.S.C. § 2254 to United States
15 Magistrate Judge David W. Christel. Currently pending in this action is Petitioner Richard
16 Wayne Blair's Motion to Appoint Counsel for Evidentiary Hearing ("Motion").¹ Dkt. 14.

17 There is no right to appointed counsel in cases brought under 28 U.S.C. § 2254 unless an
18 evidentiary hearing is required or such appointment is "necessary for the effective utilization of
19 discovery procedures." *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v.*
20 *Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d 1129,

21
22
23 ¹ Petitioner originally filed his Motion on December 21, 2018, and attached it to his Reply in support of his
24 habeas petition. *See* Dkt. 12. On January 3, 2019, the Court directed the Clerk to docket the Motion, along with
Petitioner's Declaration in Support of Motion to Appoint Counsel ("Declaration"), as separate docket entries. Dkt.
13. Petitioner's Motion and Declaration were docketed on January 3, 2019. Dkts. 14, 15. Defendant filed a Response
on January 4, 2019. Dkt. 16.

1 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing
2 Section 2254 Cases in the United States District Courts 6(a) and 8(c). The Court may appoint
3 counsel “at any stage of the case if the interest of justice so requires.” *Weygandt*, 718 F.2d at
4 954. In deciding whether to appoint counsel, the Court “must evaluate the likelihood of success
5 on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the
6 complexity of the legal issues involved.” *Id.*

7 Petitioner argues the Court should appoint counsel for an evidentiary hearing because he
8 has developed the factual basis for a federal habeas claim. Dkt. 12, p. 1.

9 The Court has not determined an evidentiary hearing is required. *See* Rules Governing
10 Section 2254 Cases in the United States District Courts 6(a) and 8(c). Additionally, Petitioner
11 has not shown, nor does the Court find, this case involves complex facts or law. Plaintiff has
12 also not shown an inability to articulate the factual basis of his claims in a fashion
13 understandable to the Court. For example, in the Statement of Additional Grounds for Review
14 that Petitioner submitted to the Washington Court of Appeals, Petitioner was able to clearly
15 describe the legal and factual grounds for his due process claim. *See* Dkt. 11, Exhibit 5.
16 Petitioner has also not shown a likelihood of success on the merits of his Petition. Accordingly,
17 appointment of counsel is not necessary for the interest of justice.

18 As Petitioner has not shown appointment of counsel is appropriate at this time, the
19 Motion is denied without prejudice.

20 Dated this 18th day of January, 2019.

21 

22 _____
23 David W. Christel
24 United States Magistrate Judge